IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.321 OF 1997
IN
ARBITRATION PETITION NO.260 OF 1996
IN
AWARD NO.98 OF 1996

Oil and Natural Gas Corporation Ltd., incorporated under the Indian Companies Act, 1956 having its Registered Office at Tel Bhavan, Dehra Dun and a Branch at E & C Division, 16-E, Maker Towers, Cuffe Parade, Bombay 400 005. Appellants
(original Petitioners)

vs.

Nippon Steel Corporation Limited, (Japan) having its Registered Office at 4-3 Otemachi, 2-Chem, Chiyoda Ku Tokyo - 100 71 JAPAN. Respondents
(original Respondents)

Mr.D.R.Zaiwalla, Senior Counsel i/b.M/s.Little & Co. for the appellants.

Mr.E.P.Bharucha, Senior Counsel with Mr.Sarosh Bharucha & Ms.A.B.Kapadia, Advocates i/b.M/s.Daphtary Ferreira & Diwan for the respondents.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 6th/8th December 2005

ORAL JUDGMENT (Per R.M.Lodha,J.).

This appeal is directed against the judgment dated 6th January 1997 passed by the learned Single Judge dismissing the arbitration petition under Sections 30 and 33 of the Arbitration Act, 1940 on the ground of it being time barred under Article 119 of the Limitation Act, 1963.

2. For the sake of brevity, we shall refer to the appellants as 'ONGC' and the respondents as 'Nippon'.

3. Brief facts which are necessary for the consideration of the controversy in appeal are thus:

(a) ONGC and Nippon entered into the agreement on 28th December, 1985 in respect of South Bassein Central Facility Complex about 80 kms west of Bombay in the Arabian Sea.

(b) The disputes and differences arose between them under the said contract which were referred to the arbitration of Justice D.V.Patel (Retd.) and Dr.S.R. Jain.

(c) The arbitrators passed the award on 2nd March, 1996.

(d) On that very day i.e. 2nd March 1996 the arbitrators forwarded the award dated 2nd March 1996 to M/s.Little & Co., the Advocates for ONGC.

(e) Then on 4th March 1996, the arbitrators sent the letter to M/s.Little & Co. intimating them that they have signed and declared the award on 2nd March 1996 and the original award has been sent to them through courier

on 2nd March 1996 itself. Alongwith the said letter, the arbitrators sent their affidavits for filing the award and the affidavit in the High Court and for necessary action.

(f) On 23rd March 1996, M/s.Little & Co., Advocates for ONGC filed the award dated 2nd March 1996 declared and signed by the arbitrators along with affidavit and the documents.

(g) On 25th April 1996, the Prothonotary & Senior Master asked M/s.Little & Co., advocates for ONGC to see him immediately.

(h) By the praecipe dated 26th April 1996, M/s.Little & Co. supplied the address of both the parties as well as the advocates.

(i) On 9th May 1996, the Prothonotary and Senior Master issued notice that was received by the ONGC on 14th June 1996.

(j) The petition under sections 30 and 33 of the Arbitration Act, 1940 was filed by the ONGC before the High Court on 12th July, 1996 for setting aside the award dated 2nd March 1996.

(k) The Nippon raised preliminary objection before the learned Single Judge that the petition for setting aside the award was barred by time under Article 119 of the Limitation Act, 1963. This plea was raised on the ground that the ONGC had notice of filing the award on 23rd March, 1996 when the award was filed in the Court by the Advocates for ONGC on that day. The limitation for making an application for setting aside the award commenced from that date; the application for setting aside the award made on 12th July, 1996 was beyond 30 days.

4. The learned Single Judge was persuaded by the preliminary objection raised on behalf of the Nippon and, consequently, he rejected the arbitration petition as time barred. Hence the appeal by ONGC.

5. Mr.D.R.Zaiwalla, the learned Senior Counsel for the ONGC submitted that the filing of the award in the High Court on 23rd March, 1996 by M/s.Little & Co. was not at the instance of the ONGC but was at the instance of the arbitrators. He would, therefore, submit that the ONGC cannot be said to have been given notice by the Court on 23rd March, 1996. According to him, the notice under Section 14(2) was issued by the Court on 9th May, 1996, which was received by ONGC on 14th June 1996 and within 30 days therefrom the petition was filed on 12th

July, 1996. He took us through Section 14(2) of the Arbitration Act, 1940, Article 119(b) of the Limitation Act, 1963 and Rules 784, 785 and 786 of the Bombay High Court (Original Side) Rules, 1980 and contended that the learned Single Judge erred in holding that the Corporation had deemed notice as contemplated under Article 119(b) of filing of the Award on 23rd March 1996 when the award was filed by M/s.Little & Co. In support of his submissions, the learned Senior Counsel relied upon the following judgments of the Supreme Courts, viz; - **(i) Nilkantha Shidramappa Ningashetti v. Kashinath Somanna Ningashetti, (1962) 2 SCR 551; (ii) Indian Rayon Corpn. Ltd. v. Raunaq and Company Pvt.Ltd., AIR 1988 SC 2054; (iii) Secretary to Govt. of Karnataka v. V.Harishbabu, (1996) 5 SCC 400; (iv) Ch.Ramlinga Reddy v. Superintending Engineer, (1999) 9 SCC 610; (v) Deo Narain Choudhury v. Shree Narain Choudhury, (2000) 8 SCC 626 and (vi) Bharat Coking Coal Ltd. v. L.K.Ahuja (2004) 5 SCC 109.**

6. Mr.D.R.Zaiwalla sought to distinguish the judgment of the Supreme Court in the case of **Food Corporation of India v. B.Kuttappan, (1993) 3 SCC 445.** He pointed out that in Food Corporation of India, the party had requested the arbitrator by means of a letter to forward the awards to his advocate for filing the same in Court and pursuant thereto the arbitrator forwarded the awards

and the entire record to the advocate of the respondent who in turn filed the awards in the Court and in this peculiar fact situation, the Supreme Court held that it did not lie in the mouth of the party to say that though he filed the Award in Court through his advocate, with or without an implied or express authority of the arbitrator that he did not have the corresponding knowledge of filing of the Award.

7. On the other hand, Mr.E.P.Bharucha, the learned Senior Counsel for the Nippon heavily relied upon the judgment of the Supreme Court in the case of Food Corporation of India and submitted that the facts of the present case are more or less similar to the facts obtaining in Food Corporation of India and that the ratio in the case of Food Corporation of India is applicable on all fours to the facts in the present case. He, thus, supported the view of the learned Single Judge.

8. Section 14 of the Arbitration Act, 1940 makes the provision for signing and filing of the Award. It reads thus:

> **14. Award to be signed and filed. -** (1) When the arbitrators or umpire have made their award, they shall sign it, and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the

arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under Cl. (b) of Sec. 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

9. Article 119 of the Limitation Act, 1963 provides for limitation in respect of the applications under the Arbitration Act, 1940. Clause (b) thereof which is relevant for the case in hand reads thus:

Description of suit	Period of limitation	Time from which period begins to run.
(a)....		
(b) for setting aside an award or getting an award remitted for re-consideration.	Thirty days	The date of service of the notice of the filing of the award.

10. Chapter XLI of the Bombay High Court (Original

Side) Rules provides for rules under the Arbitration Act, 1940. Rule 784 deals with the filing of award in the Court. It provides that the arbitrator or umpire, in accordance with Section 14 of the Act, shall cause the award or a signed copy thereof filed in Court together with depositions and documents. Rule 784 reads thus:

> 784. The arbitrator or umpire shall, in accordance with the provisions of section 14 of the Act, cause the award or a signed copy thereof to be filed in Court, together with any depositions and documents which may have been taken and proved before him and the opinion pronounced by the Court on a special case submitted by him, if any, by forwarding the same under a sealed cover addressed to the Prothonotary and Senior Master, with a letter requesting that the same be filed. He shall also send together with the award a memorandum of full postal addresses of the parties concerned, a copy of the notice given by him and the affidavit of service of such notice and of the attestation, if any, of his signature on the award.

11. Rule 785 makes incumbent upon the arbitrator or umpire to make affidavit regarding the aspects set out therein. Rule 785 reads thus:

> 785. The arbitrator or umpire shall also make an affidavit stating (1) the date on which the award was made and signed, (2) that all depositions taken and documents proved before him have been forwarded to the Court along with the award and (3) that no documents which came into his possession in the course of the arbitration proceedings have remained with him. Such affidavit shall be filed along with the award.

12. Rule 786 requires notice to be issued to the parties interested in the Award when the award has been filed in the Court. The said rule is thus:

> 786. When the award has been filed in Court, the Prothonotary and Senior Master shall forthwith issue notice of such filing to the parties interested in the award.

13. Section 14(2) of the Arbitration Act, 1940 makes it clear that the arbitrators or umpire shall file the award or cause the award to be filed or a signed copy thereof in the Court together with any deposition or documents either at the request of any party to the arbitration agreement or any person claiming under such agreement or so directed by the Court. On filing the award, as provided by Section 14(2), the Court shall give notice to the parties of the filing of the award. What is the meaning of the expression "give notice"? The Four Judge Bench of the Supreme Court in the case of Nilkantha Shidramappa Ningashetti dealing with this aspect, after noticing the distinguishing features between sub-section (1) and sub-section (2) of Section 14, held that the notice under Section 14(2) need not be notice in writing. Such notice can be given orally. The communication or the information that an award has been filed is sufficient compliance with the requirements of sub-section (2) of Section 14 with

respect to the giving of the notice to the parties concerned about the filing of the award. The expression "give notice" in sub-section (2) of Section 14, the Supreme Court held, simply means giving intimation of the filing of the award and notice to the pleader is a notice to the party in view of Rule 5 of Order III of Code of Civil Procedure,1908.

14. In Indian Rayon Corporation Limited, the Supreme Court reiterated the legal position that the notice of the filing the award may be communicated in any form. It was held that there must be filing of the award in the proper Court and service of the notice by the Court or its office to the parties concerned. The period of limitation begins from the date of service of such notice.

15. In Food Corporation of India, the Supreme Court held thus:

> "11. On the strength of aforementioned two cases of this Court, i.e. Nilkantha case and Indian Rayon Case it was claimed on behalf of the appellants that though the legal requirement is that the notice be sent by the court, some other act of the court is enough to foist awareness of the filing of the award in court, wherefrom the period of limitation was to commence. Instantly, it was urged that when the award had factually been placed before the court and the court had accepted its placement into it on October 25, 1988 itself, the factual filing of the award had been made and sequelly notice to the

respondent through his counsel. Even though the court had subsequently on November 3, 1988 issued notice for November 7, 1988, the former act, according to the appellant, was enough compliance with court sending the notice and the latter act was of no consequence. It does not lie in the mouth of the respondent to say that though he filed the award in court through his counsel, with or without the implied or express authority of the arbitrator, he did not have the corresponding knowledge of the filing of the award, when the award was readily received by the court. It seems to us that the mute language inherent in the action of the court did convey to the party placing the award before it, the factum of the award being filed in court. The mere fact that at a subsequent stage, the court issued notice to the parties informing them of the filing of the award in court for the purpose of anyone to object to the award being made the ruler of the court is an act of the court which cannot in law prejudice the rights of the parties. If once it is taken that the period of limitation for the purposes of filing the objection, insofar as the respondent was concerned, had begun on October 25, 1988, the objections filed by its on December 6, 1988 were obviously barred by time, those having been filed beyond the prescribed period of thirty days. If this be the logical conclusion, the appeals shall merit acceptance, holding the objections filed by the respondents to be time barred. Thus, so concluding, we allow these appeals, set aside the common judgment and order of the High Court, and that of the trial court, holding the objections filed by the respondents to be time barred. The trial court will proceed further in these matters in accordance with law. The parties to bear their own costs."

16. In V. Harishbabu, the Supreme Court held that the period of limitation, for setting aside the arbitration award, commences from the date of the service of the notice issued by the Court upon the parties regarding the filing of the award under Section 14(2) of the

Arbitration Act, 1940. The issuance of the notice under Section 14(2) is mandatory requirement though no formal mode for service of the notice is prescribed. It was observed that it is the substance and not the form of the notice that the relevant. Once it is established that a notice or the communication or information of the filing of the award has been issued by the Court and served upon the party concerned, the statutory requirement of Section 14(2) stands satisfied."

17. Before the Supreme Court in the case of Ch. Ramlinga Reddy, one of the issues that arose for consideration was whether the petition to set aside the award under Sections 30 and 33 of the Arbitration Act, 1940 was barred by time. While dealing with the said issue the Supreme Court held that notice under Section 14(2) of the Arbitration Act, 1940 can be given orally but the notice under that Section must be served by Court.

18. The Supreme Court in the case of Deo Narain Choudhury held that the period of limitation under Article 119 of the Limitation Act, 1963 would run from the date of the notice that has been given by the Court under Section 14(2) of the Arbitration Act, 1940. The legal position that notice need not be in writing and can be oral was reiterated. However, it was observed

that notice must be some act of the Court.

19. In Bharat Coking Coal Ltd., the Supreme Court held that mere knowledge of passing of award was not enough. The period of limitation as provided in Article 119(b) of the Limitation Act, 1963 shall commence only upon notice as to filing of the award in the Court being given to the parties concerned.

20. The legal position that emerges is that Section 14(2) of the Arbitration Act, 1940 obligates the Arbitrators or Umpire, as the case may be, to file the award or cause the award to be filed in the Court. If the award is not filed in the Court personally by the Arbitrators or Umpire, the award may be caused to be filed in the Court through the parties or their advocates or even third party. The Court can also direct the arbitrators or the umpire to file the award if the award is not filed. Upon the award being filed in the Court, Section 14(2) provides that Court shall give notice to the parties of the filing of the award. The notice that is contemplated under Section 14(2) may be oral or in writing; no form of the notice is prescribed. That notice, however, must be an act of the Court.

21. The question that falls for determination in this

Appeal is whether the filing of the award dated 2nd March 1996 by M/s.Little & Co., advocates for the ONGC in the Court on 23rd March 1996 is the deemed notice under Section 14(2) of the Arbitration Act, 1940 and the limitation for setting aside the said award at the instance of ONGC shall commence from that date.

22. Indisputably upon the conclusion of the arbitration proceedings, the arbitrators passed the award on 2nd March 1996. On that very day, the arbitrators forwarded the award to M/s.Little & Co., advocates representing the ONGC. Then on 4th March, 1996 the arbitrators by the letter dated 4th March, 1996 reminded M/s.Little & Co., advocates for the ONGC that they have already signed and declared the award on 2nd March 1996 and the original award has been sent to them through courier. The arbitrators sent their affidavit to M/s.Little & Co. with that letter and requested them to file the award in the Court. On 23rd March 1996, admittedly, M/s.Little & Co., advocates for the ONGC filed the award along with the entire record and the affidavit of the arbitrators. As a sequal to the filing of the award by M/s.Little and Co., the ONGC is deemed to have the notice of filing of the award as the award was filed through its advocates only. The award filed by M/s.Little & Co. in the Court is as if ONGC has placed the award before the Court and correspondingly constructive notice under Section 14(2).

The law postulates notice to be sent by the Court but in the Food Corporation of India the notice by Court was deemed to be the act of the party's advocate in filing the award in Court.

23. Instant case is quite similar to the case of Food Corporation of India. We shall, therefore, refer to Food Corporation of India at little length to find out its ratio decidendi. In that case the arbitrator made the award on October 3, 1988. On that date itself, the arbitrator on his own gave notice to the parties under Section 14(1) of the making and signing of the award. One of the parties to the arbitration proceedings E.Kuttapan requested the arbitrator by means of his letter to forward the award to his advocate for filing the same in the Court. On October 12, 1988, the arbitrator forwarded the award and the entire record to the advocate of the respondent by a forwarding letter with a copy of the letter to the other party. On October 25, 1988 the respondent's advocate filed the award in the Court and intimated to the other side to that effect on October 26, 1988. Later the Court vide its order dated November 3, 1988 directed the issuance of the notice to the advocates appearing for the parties for November 7, 1988. E.Kuttapan filed objections to the award on 8th December, 1988. Food Corporation of India raised the plea of limitation. The trial Court

overruled the objection of limitation. The High Court concurred with the view of the trial Court and the matter went to the Supreme Court. The Supreme Court considered its previous decisions in the case of Nilkantha Shidramappa Ningashetti, Indian Rayon Corporation Ltd. and Kumbha Mawji and held that when the award had actually been placed before the Court and the Court had accepted its placement into it on October 25, 1988, the factual filing of the award had been made and sequelly notice to the respondent through his counsel. It was held that it was not open to the respondent (E.Kuttapan) to say that though he filed the award in Court through his counsel, he did not have the corresponding knowledge of the filing of the award. The Supreme Court also held that mere issuance of notice to the parties by the Court thereafter would be of no help as the limitation had begun to run on October 25, 1988 when the award was filed. The objections filed on October 6, 1988 were, thus, held time barred. The ratio laid down in Food Corporation of India is that once the award is filed in the Court by the party through his advocate, the receipt of the award by the Court is silent communication of filing the award to that party and the limitation for the purposes of filing the objections in so far as that party is concerned shall commence from the date of filing the award.

24. The learned Senior Counsel for the ONGC vehemently contended that the judgment of the Supreme Court in the case of Food Corporation of India is not applicable to the facts of the present case. According to him, the fact that the respondent there requested the arbitrator by means of a letter to forward the award to his advocate for filing the same in the Court and acting on the said letter, the arbitrator forwarded the award to the advocate for the respondent for filing the same in the Court materially distinguishes the said case from the facts of the present case. We are afraid, the distinction suggested by the learned Senior Counsel is no distinction and does not make that judgment inapplicable to the facts of the present case. The award after it is declared and signed is required to be filed in the Court by the arbitrator under Section 14(2). The arbitrators, in the present case, declared and signed the award on 2nd March 1996 and forwarded the same to the advocates for ONGC for filing the same in the Court. The praecipe by which the award was filed before this Court mentions 'M/s.Little & Co., advocates for ONGC'. In this fact situation, the moment the award was filed by M/s.Little & Co. on 23rd March 1996 and taken on record by the Court, the notice by the Court is deemed to ONGC. The ratio of the Supreme Court in the case of Food Corporation of India, in our considered opinion, is squarely applicable to the facts of the

present case.

25. In the case of Ch.Ramlinga Reddy, the Supreme Court noticed the Food Corporation of India in paragraph 8 and after re-production of paragraph 11 of the said judgment, in paragraph 9 held thus:

> "9. It will be noted that it was held that it did not lie in the mouth of the party who had filed the award in court through his advocate to contend that he did not have knowledge of the filing of the award and he could not contend that it was only the subsequent date upon which the Court issued notice that was the starting point for limitation. This judgment, as the passage quoted indicates, does not in any way dilute what was laid down in the case of Nilkantha Sidramappa Ningashetti and Indian Rayon Corpn. Ltd., indeed, it could not, for those were decisions of a larger and a coordinate Bench, respectively. The judgment holds only that a party who has filed the award in Court through his advocate is estopped from contending that, so far as he is concerned also, the period of limitation to challenge the award begins only when the court issues notice in respect of its filing. The ratio of the judgment has, therefore, no application to the facts of the case before us."

. Food Corporation of India, thus, was held to have laid down that a party who has filed the award in Court through his advocate is estopped from contending that so far as he is concerned, the period of limitation to challenge the award begins only when the Court issues notice in respect of its filing. The Supreme Court then observed that the ratio of Food Corporation of India was not applicable to the facts in the case of Ch.Ramlinga

Reddy.

26. In the case of Deo Narain Choudhury, Food Corporation of India is noticed in paragraph 13 of the report. The Supreme Court in this regard held thus:

> "13. Mr.Misra also relied upon the case of Food Corpn. of India v. E. Kuttappan wherein again it is reiterated that the notice need not be in writing. In this case the arbitrator had forwarded the award along with the entire record to the respondent's counsel. This was done at the request of the respondent's counsel. The respondent's counsel then filed the award in the court. The court thereupon issued notice to the parties. The question was what was the date from which the period of limitation started running. This Court held that as the respondent's counsel filed the award in court he did so as an agent of the arbitrator. It was held that as the respondent's counsel had filed the award in the court the respondent had knowledge about the filing of the award and the period of limitation started running from the date when the award was filed in the court by the respondent's counsel. This Court held that the mere fact that subsequently court had issued a notice to the parties did not extend the period of limitation. Thus in this case the notice by court was deemed to be the act of the respondent's counsel in filing the award in court."

. Very importantly, with regard to the Food Corporation of India, it was observed that in that case the notice by Court was deemed to be the act of the respondent's counsel in filing the award in court.

27. Food Corporation of India holds the field. The facts obtaining in Food Corporation of India were not

found either in the case of Ch.Ramlinga Reddy or Deo Narayan Choudhary and, therefore, in both these decisions Food Corporation of India was distinguished. Food Corporation of India does not take a view different from Nilkantha Shidramappa Ningashetti and Indian Rayon Corporation. As a matter of fact both these decisions were considered in Food Corporation of India and the legal position highlighted in para 11 of the judgment. Applying the ratio of Food Corporation of India, the ONGC has to be held to have a deemed and constructive notice of the filing of the award on 23rd June 1996 and the limitation for the purposes of filing objections would accordingly commence from that date. The objections to the award filed by the ONGC on 12th June 1996 were clearly time barred and rightly held to be so by the learned Single Judge.

28. The appeal is dismissed with no order as to costs.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)